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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 DLJ MORTGAGE CAPITAL, INC.,

11 Plaintiff,

12 vs.

13 OLD REPUBLIC TITLE INSURANCE
14 GROUP, INC.; OLD REPUBLIC NATIONAL
15 TITLE INSURANCE COMPANY;
16 TITLEONE OF LAS VEGAS, INC.; DOE
17 INDIVIDUALS I through X; and ROE
18 CORPORATIONS XI through XX, inclusive,

19 Defendants.

Case No.: 2:20-cv-01662-KJD-VCF

**MOTION FOR LEAVE TO SERVE
DEFENDANT TITLEONE OF LAS
VEGAS, INC. VIA THE NEVADA
SECRETARY OF STATE**

19 COMES NOW Plaintiff, DLJ Mortgage Capital, Inc. (hereinafter “DLJ Mortgage” or
20 “Plaintiff”), by and through its attorneys of record, Darren T. Brenner, Esq. and Lindsay D.
21 Robbins, Esq., of the law firm of Wright, Finlay & Zak, LLP, and hereby seeks leave of the
22 Court to serve Defendant TitleOne of Las Vegas, Inc. (“TitleOne”) with a copy of the Summons
23 and Complaint via the Nevada Secretary of State, pursuant to NRCP 4.2(c)(3).¹

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28 ¹ Fed. R. Civ. P. 4(e)(1) provides that service should be made “following state law for serving a
summons...in the state where the district court is located...”

1 This Motion is based on the attached Memorandum of Points and Authorities, the
2 Declaration of Counsel, all papers and pleadings filed herein, and on any oral or documentary
3 evidence that may be presented at a hearing, should one be required, on this matter.

4 DATED this 16th day of March, 2021.

5 WRIGHT, FINLAY & ZAK, LLP

6 /s/ Lindsay D. Robbins, Esq.

7 Darren T. Brenner, Esq.

8 Nevada Bar No. 8386

9 Lindsay D. Robbins, Esq.

10 Nevada Bar No. 13474

11 7785 W. Sahara Ave., Suite 200

12 Las Vegas, Nevada 89117

13 *Attorneys for Plaintiff, DLJ Mortgage Capital, Inc.*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. STATEMENT OF FACTS**

16 On September 8, 2020, Plaintiff filed its Complaint in the Eighth Judicial District Court,
17 in Clark County Nevada, as Case No. A-20-820843-C. On September 10, 2020, Defendant Old
18 Republic National Title Insurance Company removed the matter to this Court. ECF No. 1.

19 On September 9, 2020, Plaintiff attempted to serve the last known registered agent of
20 TitleOne—Clayton Freeman—at 2485 Village Drive, Suite 190, in Henderson Nevada, but
21 found that the office is currently occupied by Appreciation Financial. ECF No. 9. On December
22 23, 2020, Plaintiff filed a Motion to Extend Time for Service on TitleOne [ECF No. 23], which
23 was granted on January 25, 2021. ECF No. 29.

24 On January 28, 2021, Plaintiff attempted to serve the corporate officers of TitleOne at
25 1101 W. River Street, Suite 201, in Boise, Idaho, but was advised this location was for TitleOne
26 Corporation, a different entity than TitleOne. ECF No. 30. A search of the Nevada Secretary of
27 State's online search portal for TitleOne shows no other addresses or parties to attempt service
28

on.² In order to serve its Complaint upon TitleOne, Plaintiff requests this Court to allow service upon the Nevada Secretary of State.

II. LEGAL ARGUMENT

Fed. R. Civ. P. Rule 4(h)(1)(A) provides that service upon a corporation, partnership, or association should be made in the manner prescribed by Fed. R. Civ. P. 4(e)(1). Fed. R. Civ. P. 4(e)(1) provides that service should be made “following state law for serving a summons...in the state where the district court is located...” Accordingly, Plaintiff turns to the Nevada Rules of Civil Procedure to serve TitleOne. The following statutes apply to service upon a business entity or association within the State of Nevada:

(1) *Entities and Associations in Nevada.*

(A) An entity or association that is formed under the laws of this state, is registered to do business in this state, or has appointed a registered agent in this state, may be served by delivering a copy of the summons and complaint to:

- (i) the registered agent of the entity or association;
- (ii) any officer or director of a corporation;
- (iii) any partner of a general partnership;
- (iv) any general partner of a limited partnership;
- (v) any member of a member-managed limited-liability company;
- (vi) any manager of a manager-managed limited-liability company;
- (vii) any trustee of a business trust;
- (viii) any officer or director of a miscellaneous organization mentioned in NRS Chapter 81;
- (ix) any managing or general agent of any entity or association; or
- (x) any other agent authorized by appointment or by law to receive service of process.

NRCP 4.2(c)(1)(A). If a plaintiff is unable to effectuate service upon a business entity or association under NRCP 4.2(c)(1), NRCP Rule 4.2(c)(3) allows for service upon the defendant by way of the Secretary of State.

(A) If, for any reason, service on an entity or association required to appoint a registered agent in this state or to register to do business in this state cannot be made under Rule 4.2(c)(1) or (2), then the plaintiff may seek leave of court to

² A true and correct copy of the printout from the Nevada Secretary of State’s Website for TitleOne of LasVegas, Inc. is attached as **Exhibit 1**.

1 serve the Nevada Secretary of State in the entity's or association's stead by filing
2 with the court an affidavit:

- 3 (i) setting forth the facts demonstrating the plaintiff's good faith attempts
4 to locate and serve the entity or association;
5 (ii) explaining the reasons why service on the entity or association cannot
6 be made; and
7 (iii) stating the last-known address of the entity or association or of any
8 person listed in Rule 4.2(c)(1), if any.

9 The Declaration of Lindsay D. Robbins, Esq. is attached hereto as **Exhibit 2**.³ As outlined by
10 the Declaration of counsel and evidenced by the prior attempts at service and supporting
11 Affidavits of Due Diligence [ECF Nos. 9 & 30], Plaintiff has good cause to believe Defendant
12 cannot be served within the State of Nevada and therefore requests leave to effectuate service of
13 process on the Nevada Secretary of State.

14 **III. CONCLUSION**

15 Based on the above, Plaintiff respectfully requests leave to serve a copy of the Summons
16 and Complaint on TitleOne via the Nevada Secretary of State.

17 DATED this 16th day of March, 2021.

18 WRIGHT, FINLAY & ZAK, LLP

19 /s/ Lindsay D. Robbins, Esq.

20 Darren T. Brenner, Esq.

21 Nevada Bar No. 8386

22 Lindsay D. Robbins, Esq.

23 Nevada Bar No. 13474

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25 Las Vegas, Nevada 89117

26 *Attorneys for Plaintiff, DLJ Mortgage Capital, Inc.*

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28 ³ An unsworn declaration is permitted in lieu of an affidavit or other sworn declaration. See
NRS 53.045.

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Electronic Filing Procedure IV(B),, I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 16th day of March, 2021, I did cause a true copy of the foregoing **MOTION FOR LEAVE TO SERVE DEFENDANT TITLEONE OF LAS VEGAS, INC. VIA THE NEVADA SECRETARY OF STATE** was transmitted electronically through the Court's e-filing electronic system to the attorney(s) associated with this case.

/s/ Faith Harris

An Employee of WRIGHT, FINLAY & ZAK, LLP

Index of Exhibits	
Exhibit 1	Nevada Secretary of State's Website printout for TitleOne of Las Vegas, Inc.
Exhibit 2	Declaration of Lindsay D. Robbins, Esq.